

# International Legal Recognition after Unilateral Secession: The Case of Somaliland

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## ABSTRACT

In many ways, Somaliland resembles a state more than Somalia. Yet, Somaliland does not have international legal recognition as a sovereign state. This paper examines what legal arguments Somaliland has to unilaterally secede from Somalia, how a lack of international legal recognition is affecting Somaliland, and why Somaliland has been unable and will likely continue to be unable to achieve international legal recognition as a sovereign state. These arguments will be made by examining relevant international law as well as by examining the rational self-interests that other states may or may not have in recognizing Somaliland.

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## INTRODUCTION

International law neither strictly forbids nor affirms the right to secession, with affirmation understood as extending international legal sovereignty of the secessionist state and forbidding understood as not extending international legal sovereignty. While a secessionist state may achieve international legal sovereignty via a treaty with the central government of the original state, also known as the rump state, the issue of achieving international legal sovereignty after unilateral secession is much more complex and difficult to achieve for the secessionist state.<sup>1</sup> In cases of unilateral secession, international law seeks to balance two often-conflicting norms: the right of peoples to self-determination and protecting the territorial integrity of existing sovereigns. In the case of *Reference re Secession of Quebec*, the Canadian Supreme Court found that a people could achieve international legal sovereignty through secession if their right to internal self-determination had been denied or if their secession resulted in a political reality that other sovereigns recognized.<sup>2</sup> However, even if a state may have a legal right to secede, it may not always result in that right being recognized due to international politics. This is true in the case of Somaliland. While Somaliland has historically been denied its right to internal self-determination within the state of Somalia, and has also existed as a *de facto* state since its secession from Somalia, it has yet to achieve international legal sovereignty.<sup>3</sup> This is because legal recognition is still dependent on the self-interests of other sovereigns, which have the power to recognize or not recognize Somaliland. While the international community at large has benefited in some ways from the existence of Somaliland, the self-interests of regional powers and super powers is such that international legal recognition for Somaliland is unlikely.<sup>4</sup>

The circumstances in which unilateral secession is legal are laid out in the advisory opinion of *Reference re Secession of*

Quebec, in which the Canadian Supreme Court determined that Quebec had no right to secede from Canada under the Canadian Constitution. Since there was no right to secede under domestic law, the Court then examined the question of whether or not international law allowed Quebec to succeed from Canada unilaterally. Proponents of secession brought three arguments to the Court. First, international law does not specifically prohibit secession. However, the Court found that there is no law that affirms the rights to secession either, with the exception of colonized or oppressed peoples.

The second argument brought forth by proponents of secession is that the right of peoples to self-determination, understood as a people's pursuit of its political, economic, social, and cultural development, is considered a general principle of international law and has been codified in many international treaties.<sup>5</sup> The sheer number of UN and regional international organization resolutions that include the right to self-determination is so great, that it is nearly impossible to list them all.<sup>6</sup> To include a few, Article 1 and Article 55 of the *Charter of the United Nations*, Article 1 of the *International Covenant on Civil and Political Rights*, Article 1 of the *International Covenant on Economic, Social and Cultural Rights*, the General Assembly's *Declaration on Friendly Relations*, and the *African Union Constitutive Act* all specify a right to self-determination.<sup>7</sup> While many international agreements affirm the right to self-determination, these same documents balance this right with protecting territorial integrity and the stability of relations between sovereign states. International law is engaged in a balancing act between these competing interests. As a result, whenever possible, self-determination should be exercised within the framework of existing sovereign states, consistent with the maintenance of the territorial integrity of those states. However, when internal self-determination is not possible, a right to external self-determination, i.e. secession, may exist. Quebec was not deemed to have a right to secession, since many Quebecois have held high-level government offices and the rights of the Quebecois

population at large have not been infringed in any significant way.

The last argument addressed by the Court was regarding the “effectivity” principle, which is the legal recognition of a political reality that a sovereign has been created out of secession.<sup>8</sup> This argument claims that since international law does not prohibit secession, international recognition could help codify sovereignty if such a political reality existed. The Court stated that if *de facto* secession occurred, it would depend on support from the population of Quebec to make the secession a reality and recognition from other sovereigns could give Quebec legal status. Revolutions are inherently illegal, but they still occur and have the ability to create new sovereign entities. An illegal act such as this may gain legal status through recognition. However, this does not mean that the act was legal retroactively.<sup>9</sup>

While Quebec was not deemed to have a right to external self-determination, the circumstances surrounding Somaliland are quite different. Given the criteria outlined in this case, Somaliland has two strong arguments for international legal status; it was denied a right to internal self-determination, and its existence is a political reality. First, Somaliland has been denied its right to internal self-determination. Despite maintaining international legal sovereignty, as exemplified by its seat at the UN, Somalia is a failed state with little, if any, control over its territory.<sup>10</sup> Thus, the people of Somaliland are unable to exercise their right to internal self-determination. The Somali state has no democratic channels with significant power in which the people of Somaliland could influence political affairs. There have been attempts to undermine this argument, such as when President Abdiqasim Salad Hassan appointed two northerners from Somaliland as Prime Minister and Foreign Minister, respectively, in 2000.<sup>11</sup> But again, the government in Mogadishu is almost powerless, so this did little to influence affairs in favor of the interests of the people of Somaliland.

While the Somali central government is unwilling to recognize the secession Somaliland, like the Canadian central government was unwilling to recognize the secession of Quebec, the cases are different in that the Somali central government is also unable to recognize the secession of Somaliland.<sup>12</sup> Somaliland also has a strong argument that it was denied its right to self-determination even before the Somali state collapsed. Somaliland has not always been unified with the southern part of Somalia. Somaliland existed as a distinct colonial territory for 80 years. After colonial rule ceased, Somaliland was internationally recognized as a sovereign state for five days before joining the southern, formerly Italian colony, on July 1, 1960.<sup>13</sup> While there was a referendum on unification, it lacked legitimacy. During that vote, sixty percent of Somaliland voters rejected unification. However, the southern Somali population, which was much larger than that of Somaliland, voted in favor of unification. In effect, the right to Somaliland’s self-determination was vetoed. In addition, over half of the eligible Somaliland voting population participated in a boycott of the election.<sup>14</sup> Those who did vote in Somaliland voted to maintain their territorial status quo in accordance to customary international legal practice of *uti possidetis*.<sup>15</sup>

The second argument for legal recognition has to do with the “effectivity” principle mentioned in *Reference re Secession of Quebec*. In order to explore this argument, which is predicated on a secessionist movement that has resulted in a *de facto* state, it is first helpful to review the various definitions of sovereignty. Krasner (1999) identifies four types of sovereignty: international legal, Westphalian, domestic, and interdependence. States may possess some of these forms of sovereignty and not others. International legal sovereignty, which Somalia has and Somaliland is seeking, is a matter of authority and legitimacy, but not control. It is dependent on the practice of mutual recognition, usually between territorial entities that have formal judicial independence. It allows sovereigns to engage in treaty making, establish diplomatic immunity, and offers protection from legal action taken in other states. This form of sovereignty is almost universally desired because it provides benefits without imposing a cost. Westphalian sovereignty is defined as political organization based on the exclusion, *de facto* or *de jure*, from authority structures within a given territory.<sup>16</sup> Again, this form of sovereignty relates to issues of authority and legitimacy, but not control. In a globalized world, it is worth questioning whether this form of sovereignty continues to exist, or whether it should exist.<sup>17</sup> When comparing the Westphalian sovereignty of Somalia and Somaliland, they both lack Westphalian sovereignty, but in different ways. Somaliland exists *de facto* within a territory that Somalia claims. However, Somalia exists *de jure* within Somaliland territory, even if it has no control over that territory. Domestic sovereignty refers to the formal organization of political authority within a state and the ability of public authorities to exercise effective control within the borders of their state. This form of sovereignty involves authority and control, both the specification of a legitimate authority within a given territory and the extent to which that authority can be effectively exercised. Interdependence sovereignty is the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state. Therefore, it is exclusively concerned with control and not authority or legitimacy.<sup>18</sup>

Compared to Somalia, Somaliland enjoys a higher-level domestic sovereignty and interdependence sovereignty and in almost all accounts, Somaliland better fits the modern definition of a state. Somaliland has an organized political leadership. Somaliland has held several democratic elections since it declared independence, which at times has even included a parliament controlled by the opposition party. The administrative apparatus of the government of Somaliland has been built from the bottom up, through integrating traditional norms, values, and relations in combination with Western notions of democracy. This has resulted in a government that is far more legitimate than the governments of many neighboring states. Its legitimacy was only bolstered by the fact that Somaliland conducted a referendum on a constitution that was overwhelmingly approved.<sup>19</sup>

Somaliland also has the capacity to provide public services, perhaps most importantly, security. The government of Somaliland employs roughly 26,000 people and about 70 percent of the national budget is used for the maintenance of security forces. The ownership of small arms is widespread among the

civilian population, but the bearing of arms in public is strictly illegal. In addition, security forces have destroyed tens of thousands of landmines.<sup>20</sup> Thus, the security forces play a crucial role in maintaining stability.

Somaliland has a permanent population that is thought to be between two and three million. Furthermore, the combination of increased security and a stable government has resulted in hundreds of thousands of refugees returning to Somaliland.<sup>21</sup> Somaliland has a defined territory, which it has had effective control of for an extended period of time. Its current borders largely resemble its colonial borders.<sup>22</sup> Somaliland has even been able to enter in relations with other states. Relative to other de facto states, Somaliland has a high level of international engagement. In part, this is due to its strategic position on the Horn of Africa and its ability to cooperate with foreign partners in combatting terrorism and piracy.<sup>23</sup> Nonetheless, international legal recognition would enhance Somaliland's ability to engage other sovereigns as well as international organizations. While many of Somaliland's governing structures remain fragile, they are stronger than Somalia's, and surely demonstrate that the state of Somaliland is a political reality. This is a reason for Somaliland to be optimistic, since historically international legal sovereignty has been achieved through first obtaining de facto sovereignty.<sup>24</sup>

The lack of international legal recognition has had several negative effects on Somaliland. Perhaps the most obvious is that Somaliland does not receive foreign aid from sovereigns that do not recognize Somaliland. The major exception is that the United Kingdom does provide some aid to its former protectorate. In addition, Somaliland does receive some aid from NGOs, but is unable to receive development aid from the World Bank and other international institutions.<sup>25</sup> Instead, aid is given to the Somali government in Mogadishu, which does not recognize the government of Somaliland and thus, does not distribute aid to the area controlled by Somaliland. However, this minimal amount of foreign aid may not be entirely negative to the development of Somaliland. As Eubank has argued, the lack of foreign aid has made political leaders more dependent on the local population for tax revenue, which has made the government bargain with domestic business and as a result, political behavior has been restrained and more accountable.<sup>26</sup>

Not only does Somaliland struggle to receive foreign aid, it is also difficult for the de facto state to borrow money. Somaliland cannot have direct relations with the International Monetary Fund or the African Development Bank. Again, this may not be completely negative because it prevents Somaliland from getting into debt. However, Somaliland's trade is adversely affected because its central bank cannot issue letters of credit. In general, Somaliland cannot enter into formal trade agreements with other nations. Foreign investors shy away from investment in Somaliland due to a lack of insurance and other investment protections. As a result, many professionals in the diaspora, who could greatly benefit Somaliland's legal, accounting, health, and educational systems, are reluctant to return.<sup>27</sup>

Since international legal sovereignty, by definition, is depen-

dent on recognition from other sovereigns, it is important to note what interests these sovereigns might have in recognizing or not recognizing Somaliland. First, as stated above, Somaliland has been willing to cooperate with external actors to combat piracy and terrorism, which is important given that Somaliland exists in a region ripe with these problems.<sup>28</sup> Second, while external self-determination may seem like a recipe for instability and war, it may actually be able to prevent war in this case.<sup>29</sup> While Somalia is currently in no position to wage war against Somaliland, it is possible that in the future a stable government could form in Mogadishu, which may try to reestablish control over Somaliland. Even if a stable government forms in Mogadishu, it seems unlikely that Somaliland will be willing to peacefully reunify with its southern neighbor.<sup>30</sup> If that is the case, international legal recognition of Somaliland may help prevent a war by making both states subject to the UN prohibition of aggressive war.<sup>31</sup> As far as states that might be the first to recognize Somaliland, the UK seems the most likely, given that Somaliland was formerly a British protectorate and the UK continues to support Somaliland. Within Somaliland's region, Djibouti and Ethiopia have both signed agreements of cooperation with Somaliland, and Ethiopia has even established a trade agreement. These seem to be the greatest prospects. Yet, they fall well short of formal recognition.<sup>32</sup>

Despite these prospects for recognition, the interests of existing sovereigns against recognizing Somaliland seem to outweigh the interests for recognizing Somaliland. Formal recognition from Ethiopia is unlikely, as there is a large Somali population in eastern Ethiopia. There is a concern that any recognition of Somaliland may encourage the Ethiopian Somali population to once again take up arms in a secessionist movement.<sup>33</sup> This is a view shared by the African Union, which has a long, committed history to respecting territorial sovereignty. There is a fear that recognition of Somaliland would increase the weight of claims for secession in other parts of Africa. Looking at super powers, with the exception of the UK, it appears that none of the UN Security Council members have any sort of significant interest in extending legal recognition to Somaliland.<sup>34</sup> While it may seem appropriate for Somaliland to appeal to the International Court of Justice (ICJ), Somaliland is not a legal state. As a result, the ICJ would be unable to exercise jurisdiction over the case unless the UN Security Council made such a request.<sup>35</sup> Given that the crux of the Somaliland's problem is largely to do with a lack of support, especially from super powers, it seems unlikely that the ICJ will be able to exercise jurisdiction over this potential case. In sum, even if Somaliland has a legitimate case for legal recognition, finding a forum to present its case is a difficult task that will require other sovereigns to cooperate, and at the moment, it seems that these sovereigns have little self-interest in doing so.

## REFERENCES

- <sup>1</sup> J. Crawford "State practice and International Law in Relation to Secession." *The British Year Book of International Law*. 69(1). 85-117.
- <sup>2</sup> Reference re Secession of Quebec, 2 SCR 217 (1998).
- <sup>3</sup> Brad Poore. "Somaliland: Shackled to a Failed State." *Stanford Journal of International Law* 45, no. 1 (2009): 117-150.

- <sup>4</sup>Fisher, Merrick. "Self-Determination in Africa a Comparative Analysis of Case Studies: Eritrea, Somaliland, South Sudan, Western Sahara." ProQuest Dissertations Publishing (2012). 123-145.
- <sup>5</sup>Reference re Secession of Quebec.
- <sup>6</sup>"Chapter I. Purpose and Principles." In *The Charter of the United Nations: A Commentary*, edited by Bruno Simma, Hermann Mosler, Albrecht Ramdelzhofer, Christian Tomuschat, Rudiger Wolfrum, Helmut Broklmann and Christian Rohde, 49-150. New York: Oxford University Press, 1995.
- <sup>7</sup>"Charter of the United Nations." *American Bar Association Journal* 31, no. 8 (1945): 388-399.; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966. United Nations. Treaty Series. Vol. 993; UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/Res/2625(XXV); African Union. "The Constitutive Act.:" Addis Ababa: African Union (2000).
- <sup>8</sup>Reference re Secession of Quebec.
- <sup>9</sup>Ibid.
- <sup>10</sup>"United Nations Member States." Accessed November 13, 2016. <http://www.un.org/en/member-states/>; J.J. Messner, Nate Haken, Patricia Taft, Hannah Blyth, Kendall Lawrence, Charlotte Bellm, Sagal Hashi, Nicole Patlerno, and Leo Rosenberg. *Fragile State Index 2016*. Washington D.C. The Fund for Peace.
- <sup>11</sup>Asteris Huliaras. "The Viability of Somaliland: Internal Constraints and Regional Geopolitics." *Journal of Contemporary African Studies* 20, no. 2 (July, 2002): 168-175.
- <sup>12</sup>Brad Poore. "Somaliland: Shackled to a Failed State." *Stanford Journal of International Law* 45, no. 1 (Winter 2009): 137-150.
- <sup>13</sup>Seth Kaplan. "The Remarkable Story of Somaliland." *Journal of Democracy* 19, no. 3 (2008): 143-157; Huliaras. "The Viability of Somaliland."
- <sup>14</sup>Poore. "Somaliland: Shackled to a Failed State." 137-150.
- <sup>15</sup>Steven R Ratner. "Drawing a Better Line: UTI Possidetis and the Borders of New States." *The American Journal of International Law* 90, no. 4 (1996): 590-624; Antonio Cassese. *Self-Determination of Peoples: A Legal Reappraisal*. New York: Cambridge University Press, 1995.
- <sup>16</sup>Stephen D Krasner. "Sovereignty: Organized Hypocrisy." Princeton, US: Princeton University Press, (1999). Accessed November 13, 2016. ProQuest Ebrary.
- <sup>17</sup>Hurst Hannum, ed. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*. Philadelphia: the University of Pennsylvania, (1990).
- <sup>18</sup>Krasner. "Sovereignty: Organized Hypocrisy."
- <sup>19</sup>Michael Walls and Steve Kibble. "Beyond Polarity: Negotiating a Hybrid State in Somaliland/Jenseits Der Polarität: Das Aushandeln Eines Hybriden Staates in Somaliland." *Africa Spectrum* 45, no. 1 (2010): 31-56; Hannum. *Autonomy, Sovereignty, and Self-Determination*; Huliaras "The Viability of Somaliland." 157-182.
- <sup>20</sup>Walls and Kibble. "Beyond Polarity: Negotiating a Hybrid State in Somaliland" 31-56; Hannum. *Autonomy, Sovereignty, and Self-Determination*; Huliaras "The Viability of Somaliland." 157-182.
- <sup>21</sup>Scott Pegg. "On the Margins: International Society and the De Facto State." ProQuest Dissertations Publishing, (1997); Kaplan. "The Remarkable Story of Somaliland." 143-157.
- <sup>22</sup>Huliaras "The Viability of Somaliland." 157-182.
- <sup>23</sup>Nina Caspersen. "Degrees of Legitimacy: Ensuring Internal and External Support in the Absence of Recognition." *Geoforum* 66, (2015): 184-192.
- <sup>24</sup>Robert H Jackson. *Quasi-States: Sovereignty, International Relations, and the Third World*. New York: Cambridge University Press, (1990).
- <sup>25</sup>Caspersen. "Degrees of Legitimacy" 184-192.
- <sup>26</sup>Nicholas Eubank. "Taxation, Political Accountability and Foreign Aid: Lessons from Somaliland." *Journal of Development Studies* 48, no. 4 (04, 2012): 465-480.
- <sup>27</sup>Huliaras "The Viability of Somaliland." 157-182.; Kaplan. "The Remarkable Story of Somaliland." 143-157.
- <sup>28</sup>Caspersen. "Degrees of Legitimacy" 184-192.
- <sup>29</sup>A. Sureda. ed. *The Evolution of the Right of Self-Determination: A Study of United Nations Practice*. The Netherlands: A.W. Sijthoff International Publishing Company B.V.(1973).
- <sup>30</sup>Ian S Spears. "Reflections on Somaliland & Africa's Territorial Order." *Review of African Political Economy* 30, no. 95 (2003): 89-98.
- <sup>31</sup>Poore. "Somaliland: Shackled to a Failed State." 137-150.
- <sup>32</sup>Fisher. "Self-Determination in Africa a Comparative Analysis of Case Studies." 123-145.
- <sup>33</sup>Peter Woodward. "Horn of Africa, the: Politics and International Relations." London, US: I.B. Tauris, (1996).
- <sup>34</sup>Fisher. "Self-Determination in Africa a Comparative Analysis of Case Studies." 123-145.
- <sup>35</sup>"Statute of the International Court of Justice." *The Yale Law Journal* 55, no. 5 (1946): 1318-1331.

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